

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

ENTROPIC COMMUNICATIONS, LLC,

Plaintiff

v.

CHARTER COMMUNICATIONS, INC.,

Defendant.

Civil Action No. 2:22-cv-00125-JRG

**JURY TRIAL DEMANDED**

**DEFENDANT'S RESPONSE TO PLAINTIFF'S  
NOTICE OF OUTSTANDING ISSUES (DKT. 372)**

Defendant Charter Communications, Inc. (“Charter”) submits this Response to Plaintiff’s Notice of Outstanding Issues (Dkt. 372).

Charter disagrees with Plaintiff Entropic Communications, LLC’s (“Entropic”) statement that Entropic “invited Charter to provide its insert so the parties could file a joint notice, but Charter did not indicate it wished to join the notice.” (Dkt. 372 at 1). In advance of a December 6, 2023 meet and confer, counsel for Entropic emailed counsel for Charter stating, “Ideally, we will file a joint notice that contains Charter’s position on the above issues, but we will file the Notice regardless this evening so that the Court has time to consider the issues in advance of Friday’s Pre-Trial Conference.” (Ex. A at 1.) Entropic did not provide a draft of its Notice of Outstanding Issues for Charter to include its positions. Accordingly, Charter now files this response.

**I. TESTIMONY AND DOCUMENTS RELATED TO CHARTER'S DOCSIS LICENSE DEFENSE**

Charter will not be calling David Taylor or Judson Cary to testify at trial, and Charter will not be using exhibits DTX-001, DTX-002, DTX-027, and DTX-028.<sup>1</sup> As such, Charter believes there is nothing for the Court to resolve.

**II. TESTIMONY AND DOCUMENTS RELATED TO INVALIDITY**

Charter disagrees with Entropic's characterization of Charter's statements. Entropic states that Charter "indicated that it intended to have Dr. Goldberg offer his opinions concerning anticipation and/or obviousness" and "then have Mr. Bakewell rely on his testimony at trial." (Dkt. 372 at 4.) In the email that Entropic cites, Charter stated that it "will not call Dr. Goldberg to present testimony about the invalidity of any of the remaining asserted claims. However, we may still call Dr. Goldberg to testify about matters in his report regarding state of the art, as these are relevant at least to damages." (Dkt. 372, Ex. C at 2). Further, on a December 6, 2023 meet and confer, Charter explained to Entropic that Dr. Goldberg would not present any opinions on anticipation/obviousness and that Charter's damages expert not rely on anything Dr. Goldberg said. Charter further stated that Dr. Goldberg would talk about what is in the prior art to show what was already known, and that he can show that the problem in the Asserted Patents was already solved and that goes to the value of the claims of the Asserted Patents being a small increment over what was already known and a very specific way of solving an already-solved problem.

Charter agrees that this issue remains in dispute.

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<sup>1</sup> Charter reserves the right to call Messrs. Taylor and Cary and use these exhibits should the Court grant Charter's Objection To Report And Recommendation (Dkt. 357) Granting-In-Part And Denying-In-Part Entropic's Motion For Summary Judgment Of No License Defense Based On DOCSIS (Dkt. 177), filed at Dkt. 386.

### III. EXHIBITS WITH DISPUTES REMAINING

Charter agrees with Entopic that its objections to DTX-006 and DTX-019 have not been resolved. However, Charter will not be using DTX-006

as argued by Entropic. (Dkt.

372 at 4.) Charter made clear at the initial pretrial conference that it was relevant to the hypothetical negotiation:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Pretrial Conference Tr. at 85:16–87:4.

Therefore Charter agrees that the admissibility of these exhibits remains at issue.

IV. **MOTION FOR PROTECTIVE ORDER FROM THE COURTS MEMORANDUM ORDER (DKT. 358) GRANTING-IN-PART AND DENYING-IN-PART ENTROPIC'S MOTION TO STRIKE THE EXPERT REPORT OF DR. KEVIN ALMEROOTH (DKT. 175)**

As detailed in Charter's Motion For Protective Order From The Courts Memorandum Order (Dkt. 358) Granting-In-Part And Denying-In-Part Entropic's Motion To Strike The Expert Report Of Dr. Kevin Almeroth (Dkt. 175), there remains a dispute regarding whether Charter must provide witnesses for depositions. (*See* Dkt. 371.) Charter will not rely on paragraphs 11 and 20 of the Supplemental Rebuttal Expert Report of Dr. Kevin Almeroth Regarding Non-Infringement. The Court's Memorandum Order Granting-in-part and Denying-in-part Plaintiff Entropic Communications, LLC's Motion to Strike the Expert Report of Dr. Kevin Almeroth is clear that those paragraphs "should be allowed in, provided that Charter provides a corporate designee to be deposed on the screenshots, and makes available Mr. Stafford to be deposed on his conversation with Dr. Almeroth." (Dkt. 358 at 14.) As Charter is not relying on those paragraphs, no depositions are required. Entropic has stated that its position is that the "Order was not conditioned on any further actions that either party may take" and that the depositions are required. (Ex. A at 3.)

Accordingly, this issue remains in dispute.

Dated: December 7, 2023

Respectfully submitted,

/s/ Daniel Reisner by permission Elizabeth Long

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document and all attachments thereto are being filed electronically in compliance with Local Rule CV-5(a). As such, this document is being served December 7, 2023, on all counsel of record, each of whom is deemed to have consented to electronic service. L.R. CV-5(a)(3)(A).

/s/ Elizabeth Long  
Elizabeth Long